

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF NEW HAMPSHIRE

U.S. DISTRICT COURT  
DISTRICT OF N.H.  
FILED  
DEC 13 12 29 PM '04

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Linda J. Waring \*  
PO BOX 408 \*  
Winnisquam, NH 03289 \*  
Plaintiff \*

v. \*

UNUM Life Insurance Company \*  
Of America \*  
2211 Congress Street \*  
Portland, ME 04122 \*  
Defendant. \*

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C. 04-471-JM

COMPLAINT

Plaintiff, Linda J. Waring, by and through her attorneys, Craig, Wengers, Craig & Capuchino, P.A., sues the Defendant UNUM Life Insurance Company of America and alleges as follows:

1. That the Plaintiff, Linda Waring, is a resident of Belknap County, State of New Hampshire.
2. That the Defendant, UNUM Life Insurance Company of America, is a corporation having its principal place of business in Portland, Maine.
3. That this is an action for benefits under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 USC §1001 *et seq.*
4. That Venue is proper in this District under 28 USC §1391 and 28 USC §1132(e)(2) because the Defendant resides or may be found in this District and it is the judicial district in which the breach occurred and a substantial part of the events or omissions giving rise to the claim occurred.
5. That under the terms of the Plaintiff's Disability Policy (hereinafter, the "Policy"), disability is defined as "you are limited from performing the material and substantial

- duties of your regular occupation due to your sickness or injury; and you have a 20% or more loss in your indexed monthly earnings due to the same sickness or injury.”
6. That under the terms of the Plaintiff's Policy, disability benefits will continue beyond twenty four (24) months if “you are working in any competent occupation and continue to have a 20% or more loss in your indexed monthly earnings due to your sickness or injury; or not working and, due to the same sickness or injury, are unable to perform the duties of any gainful occupation for which you are reasonably fitted by education, training, or experience.”
  7. That the Plaintiff was awarded disability benefits under the “Policy” on or about April 01, 2001 for injuries sustained in a fall down a flight of stairs.
  8. That on or about January 06, 2004, the Defendant terminated the Plaintiff's disability benefits claiming she no longer met the definition of disability as quoted in Paragraphs 7 & 8 above.
  9. Plaintiff has fully and completely exhausted her administrative remedies and has received a final decision by UNUM Life Insurance Company of America terminating Long-Term Disability Benefits.
  10. That according to a letter written by Dr. Laura Fox (the Plaintiff's primary care physician), dated February 06, 2004, which was submitted to the Defendant for consideration, the Plaintiff is still disabled, has a cognitive deficit, and is impaired.
  11. That the Defendant has relied almost exclusively on the review of the Plaintiff's medical file by on-site physicians, who have never examined or even spoken to the Plaintiff, in denying the Plaintiff's long-term disability benefits.
  12. That the Plaintiff has made repeated requests for a true hearing with the right to present evidence, call witnesses, present documents, and cross-examine witnesses, which requests have gone unanswered.

WHEREFORE, Plaintiff, Linda Waring, prays the Honorable Court to grant the following relief:

- i. Assume jurisdiction of this cause;
- ii. Review the decisions of the Defendant, UNUM Life Insurance Company of America;

- iii. Grant a hearing with the right to call witnesses, present documents, and cross-examine witnesses;
- iv. Alternatively, remand this matter to the Defendant with an order to grant a hearing with the right to present evidence, call witnesses, present documents, and cross-examine witnesses;
- v. Grant a decision for Long-Term Disability benefits favorable to the Plaintiff; and
- vi. Grant such other and further relief as the Court deems fair and just.

Respectfully submitted,  
Linda J. Waring  
By her attorneys,  
CRAIG, WENNERS, CRAIG &  
CAPUCHINO, P.A.

Dated: 12/9/04

By: Vincent A. Weners, Jr.

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